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## FISCAL IMPACT REPORT

SPONSOR: Hanosh DATE TYPED: 03/06/03 HB HJM 76

SHORT TITLE: Study Effect of Below-Cost Sales SB \_\_\_\_\_

ANALYST: Padilla

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
Economic Development Department

### SUMMARY

#### Synopsis of Bill

House Joint Memorial 76 requests the Economic Development Department to study the effect of “below-cost sales” on New Mexico’s small businesses. The memorial describes below-cost sales as an unfair marketing practice in which retailers or wholesalers sell goods at below cost in order to attract patronage or otherwise harm a competitor. It states that the practice of below-cost sales is contrary to the public interest and can cause bankruptcies and business failures.

The memorial asks EDD to report to an appropriate interim committee by October 31, 2003.

#### Significant Issues

Below-cost sales are believed by many small businesses, especially grocery stores and gas stations, to seriously harm their businesses. Their efforts to stop the practice of below-cost sales are often directed at mega-chains, such as Wal-Mart. The National Grocers’ Association (NGA), for example, has observed and recorded instances of below-cost pricing practices of large chains and their partners. In 2002, the National Association of Convenience Stores passed a resolution that opposes the below-cost sale of motor fuels when the intent is to eliminate competition. Accord-

ing to the NGA, the U.S. District Court in Alabama has issued a permanent injunction against Murphy Oil US, a partner of Wal-Mart, for its recurring offenses of below-cost stipulations.

According to the Society of Independent Gasoline Marketers of America, 22 states have general “fair marketing” laws that ban below-cost sales of merchandise. 16 states have laws that specially ban below-cost gas sales or require a minimum markup. New Mexico is not on the lists of these states.

If the practice of below-cost sales is harming New Mexico small businesses, a study, such as the one requested by this memorial, could try to address the problem and propose possible solutions.

EDD, however, does not believe it can carry out the study without diverting staff from other department tasks.

### **ADMINISTRATIVE IMPLICATIONS**

EDD has a research staff of three FTEs. However, EDD believes it cannot accomplish the task outlined in this memorial within the requested timeframe. EDD also says that its staff does not have the expertise to perform this study.

### **POSSIBLE QUESTIONS**

1. What would the study requested by this memorial actually entail in terms of EDD staff time?
2. If below-costs sales are in fact significantly harming New Mexico small businesses, shouldn't the Economic Development Department take an interest in completing this study?

LP/ls